

APPEAL NO. 032356  
FILED OCTOBER 24, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 22, 2003. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_, and that she did not have disability. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance. The parties resolved an issue of the claimant's average weekly wage by stipulating that it is \$140.00.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on \_\_\_\_\_. The claimant had the burden of proof on that issue. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence on the issue of whether the claimant sustained a new injury as she claimed lifting a bedding comforter set in a bag at work or whether the claimant's low back problems were a continuation of ongoing low back problems related to two prior compensable low back injuries. The hearing officer determined that the claimant did not sustain a new injury lifting merchandise at work on \_\_\_\_\_. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury determination on appeal. Pool, *supra*; Cain, *supra*.

The existence of a compensable injury is a prerequisite to finding disability. Section 401.011(16). Given our affirmance of the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Edward Vilano  
Appeals Judge